

IN THE SUPREME COURT OF MISSISSIPPI***MISSISSIPPI COMMISSION ON
JUDICIAL PERFORMANCE******PETITIONER******v.*****NO. 2015-JP-00996-SCT*****JUDGE DAVID SHOEMAKE******RESPONDENT***

COMMISSION’S MOTION TO STRIKE “JOINT MOTION TO ENLARGE TIME TO
FILE BRIEF OF AMICUS CURIAE,” “AMENDED JOINT MOTION TO ENLARGE
TIME TO FILE BRIEF OF AMICUS CURIAE,” AND “SECOND AMENDED JOINT
MOTION TO ENLARGE TIME TO FILE BRIEF OF AMICUS CURIAE,”
OR IN THE ALTERNATIVE, RESPONSE AND OBJECTION TO MOTION TO
ENLARGE TIME

COMES NOW the Mississippi Commission on Judicial Performance,
(“Commission”), pursuant to Section 177A of the Mississippi Constitution of 1890, as
amended, the Rules of the Mississippi Commission on Judicial Performance, and the
Mississippi Rules of Appellate Procedure, and files its Motion to Strike “Joint Motion to
Enlarge Time to File Brief of Amicus Curiae,” “Amended Joint Motion to Enlarge Time
to File Brief of Amicus Curiae,” and “Second Amended Joint Motion to Enlarge Time to
File Brief of Amicus Curiae.” Alternatively, the Commission files it’s Response in
Opposition to “Second Amended Joint Motion to Enlarge Time to File Brief of Amicus
Curiae.” In support thereof, the Commission would show unto this Court the following:

MOTION TO STRIKE

1. On August 6, 2015 at 4:43 p.m., a person named Laurence Broadhead electronically filed a document with this Court entitled “Joint Motion to Enlarge Time to File Brief of Amicus Curiae.” The joint motion states that the “Movants are attorneys located and/or practicing within the Thirteenth Chancery District. . . .” The joint motion asserts that eighteen attorneys “signed” the joint motion.¹

2. On August 7, 2015 at 10:51 a.m., a person named Laurence Broadhead electronically filed a document with this Court entitled “Amended Joint Motion to Enlarge Time to File Brief of Amicus Curiae.” The amended motion restates the motion and in paragraph 6 seeks to “remove Honorable Albert Turnage as a Movant of record.” The amended motion asserts that seventeen attorneys “signed” the amended motion.²

3. On August 7, 2015 at 3:51 p.m., a person named Laurence Broadhead electronically filed a document with this Court entitled “Second Amended Joint Motion to Enlarge Time to File Brief of Amicus Curiae.” The amended motion restates the motion and in paragraph 6 seeks to “remove Honorable Jason Barrett, William H. Smith, III, and April Taylor Bryant as Movants of record.” The amended motion asserts that

¹Pursuant to the Administrative Procedures for Mississippi Electronic Courts, Section 3B, the document does not bear any original signatures. Instead, the attorneys are identified as “s/(attorney name).”

²See footnote 1.

fourteen attorneys “signed” the amended motion.³

4. Commission staff have spoken to several of the attorneys who are listed as “Movants.” At least five of the attorneys did not know of the existence of the document and did not give their permission for their “signature” to be included on the document.

5. Since attorneys’ “signatures” have been included in these documents without their knowledge or permission, the “Joint Motion to Enlarge Time to File Brief of Amicus Curia,” “Amended Joint Motion to Enlarge Time to File Brief of Amicus Curiae,” and “Second Amended Joint Motion to Enlarge Time to File Brief of Amicus Curiae” must be stricken immediately.

RESPONSE AND OBJECTION TO MOTION TO ENLARGE TIME

6. The Commission filed its “Commission Findings and Recommendation” with the Clerk of this Court on June 30, 2015. After hearing testimony, receiving evidence, and considering the arguments of counsel, the Commission unanimously recommended to this Court that Respondent be removed from office, fined and assessed the costs of the proceedings.

7. Rule 29 of the Mississippi Rules of Appellate Procedure allows the filing of a Brief of an Amicus Curiae only upon leave of this Court. The Movants must demonstrate:

³See footnote 1.

that (1) amicus has an interest in some other case involving a similar question; or (2) counsel for a party is inadequate or the brief insufficient; or (3) there are matters of fact or law that may otherwise escape the court's attention; or (4) the amicus has substantial legitimate interests that will likely be affected by the outcome of the case and which interests will not be adequately protected by those already parties to the case.

M.R.A.P. 27(a). It is submitted that Movants cannot meet any of these requirements.

Therefore, their motion for additional time to file a motion for leave to file an amicus brief should be denied.

8. Movants assert that “there are matters of fact . . . that may otherwise escape the Court’s attention.” None of the Movants were disclosed by Respondent during discovery as a fact witness.⁴ The record in this matter is closed. *See* Rule 8 of the Rules of the Mississippi Commission on Judicial Performance. Any matters of fact offered by Movants have never been considered by the Commission and counsel for the Commission have not been given the opportunity to challenge these “facts” at a hearing. It would be improper for any information that was not considered by the Commission to be submitted to this Court.

⁴Keleigh Sullivan was, for a time, the guardian ad litem for the ward in the underlying conservatorship case. She testified during Joe Dale Walker’s show cause hearing on October 31, 2013. Her testimony was introduced into the record in Respondent’s show cause hearing on November 1, 2013. She was not called as a witness by either party during the Formal Hearing in this matter. The only other Movant disclosed by Respondent during discovery was Malcolm T. Rogers, Esq. and Respondent stated that he was a character witness only. At the Formal Hearing, Respondent offered character affidavits or letters from six of the Movants. (Exhibit 23). Had Respondent wished to offer character affidavits or testimony from the other Movants, he could have done so at the Formal Hearing.

9. Movants assert that “there are matters of . . . law that may otherwise escape the Court’s attention.” Respondent is represented by at least two attorneys each of whom have been members of the bar for more than thirty years. Respondent has filed a fifty-page brief in this matter and he has filed Record Excerpts which are 190 pages in length. Counsel for the Commission has filed a forty-seven page brief in this matter. It is submitted that the matters of law in this case have been thoroughly briefed and none will escape this Court’s attention.

10. Movants also assert that they have “substantial legitimate interests that will likely be affected by the outcome of the case.” They fail to state what those interests are. Rule 8.3(b) of the Mississippi Rules of Professional Conduct mandates that a lawyer having knowledge of judicial misconduct inform the appropriate authorities. The evidence before the Commission proves, by clear and convincing evidence, that Respondent committed misconduct pursuant Section 177A of the Mississippi Constitution. Movants are supposed to report misconduct, not support it.

11. Since the adoption of Section 177A of the Mississippi Constitution, this Court has only allowed an Amicus Brief in one judicial misconduct case. In that case, a question arose regarding the constitutionality of a Mississippi statute and the Attorney General was permitted to file an Amicus Brief regarding the constitutionality of that statute. *See In Re Grant*, 631 So. 2d 758 (Miss. 1994). Rule 29(a) clearly states that “leave shall not be required when the brief is presented by the state and sponsored by the

Attorney General.” M.R.A.P. 29(a). As discussed above, Movants cannot meet the requirements of Rule 29(a).

12. Pursuant to Rules 10.C and 10.D of the Rules of the Mississippi Commission on Judicial Performance, “[t]he Supreme Court shall treat all Commission matters as preference cases, to be determined with reasonable expedition” and briefs must be filed simultaneously. Simultaneous briefs were filed by the Commission and Respondent on July 30, 2015. It is submitted that the “Second Amended Joint Motion to Enlarge Time to File Brief of Amicus Curiae” was filed solely to delay these proceedings and to delay the submission of this case to the Court for decision.

13. In judicial misconduct cases, “[t]he sole parties to formal proceedings shall be the Commission and the judge.” *See* Rule 8.B of the Rules of the Mississippi Commission on Judicial Performance. Therefore, the Movants have no standing in this case.

14. It appears that some special relationship exists between Respondent and Movants. Pursuant to Canons 3 E and 3 F of the Code of Judicial Conduct, it is submitted that Respondent must disclose these relationships in open court anytime one of the Movants appears before him.

WHEREFORE, PREMISES CONSIDERED, the Commission prays that the Court will order the “Joint Motion to Enlarge Time to File Brief of Amicus Curiae,” “Amended Joint Motion to Enlarge Time to File Brief of Amicus Curiae,” and “Second

Amended Joint Motion to Enlarge Time to File Brief of Amicus Curiae” stricken. In the alternative, the Commission prays that the Court will deny the “Amended Joint Motion to Enlarge Time to File Brief of Amicus Curiae.”

Respectfully submitted, this the 7th day of August, 2015.

MISSISSIPPI COMMISSION ON
JUDICIAL PERFORMANCE

BY: /s/ Darlene D. Ballard
Darlene D. Ballard
Executive Director

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CERTIFICATE OF SERVICE

In compliance with Rule 25(d) of the Mississippi Rules of Appellate Procedure, I, Darlene D. Ballard, Executive Director for the Mississippi Commission on Judicial Performance, do hereby certify that I have this date electronically filed the foregoing COMMISSION’S MOTION TO STRIKE “JOINT MOTION TO ENLARGE TIME TO FILE BRIEF OF AMICUS CURIAE,” “AMENDED JOINT MOTION TO ENLARGE TIME TO FILE BRIEF OF AMICUS CURIAE,” AND “SECOND AMENDED JOINT MOTION TO ENLARGE TIME TO FILE BRIEF OF AMICUS CURIAE,”

OR IN THE ALTERNATIVE, RESPONSE AND OBJECTION TO MOTION TO
ENLARGE TIME with the Clerk of the Supreme Court of Mississippi using the MEC
system which sent notification to the following:

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Further, I hereby certify that I have hand delivered the document to the following
non-MEC participants:

Judge Lee J. Howard
Commission Vice Chairman
660 North Street, Suite 104
Jackson, Mississippi 39202

This the 7th day of August, 2015.

/s/ Darlene D. Ballard
Darlene D. Ballard